IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 209 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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ORIENTAL FIRE & GENERAL INSURANCE CO LTD - Appellant(s)
Versus
PRATAPBHAI BHAGVANJI RAJPUT & 2 - Defendant(s)

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Appearance :
MS MEGHA JANI for Appellant(s) : 1,
None for Defendant(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 31/07/2006

ORAL JUDGMENT

1. By way of this appeal, the appellant has challenged the judgement and award dated 17.11.1983 passed by the Motor Accident Claims Tribunal, Ahmedabad in MACP No. 210 of 1982 whereby the Tribunal awarded Rs. 25000/- by way of compensation payable to the original claimant by the original opponents.

2. The original claimant had filed claim petition seeking compensation to the tune of Rs. 25000/- in respect of the vehicular accident which occurred on 01.08.82 while he was travelling in an autorickshaw

bearing no. GTH 5687 from Gulbai Tekra to Stadium driven by original opponent no.1 in a rash and negligent manner. When the auto was passing commerce college, it turned upside down as a result of which the original claimant received injuries. The Tribunal after hearing the parties passed the aforesaid award.

3. Ms. Megha Jani, learned counsel for the appellant has contended that the Tribunal has not properly appreciated the written statement of the appellant at Ex. 18 in which a specific contention was raised that as the claimant was a passenger in the autorickshaw he was not entitled to claim any amount from the Insurance company exceeding Rs. 10000/- in view of the specific provision contained in Section 95(2)(b)(ii) of the Motor Vehicles Act even if all the other questions were answered against the appellant including the fact that the first opponent rickshaw driver was rash and negligent in driving the rickshaw. She has also drawn my attention to the terms and conditions of the policy as well as the limits of liability.

4. Though served none appears for the respondent.

5. The relevant part of the provision contained in

Section 95(2)(b)(ii) of the Motor Vehicles Act as existing at the time of the accident reads as under:

> “95.(2) subject to the proviso to sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely:-
>
> (a) xxx xxx xxx
>
> (b) where the vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, -
>
> (i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all,
>
> (ii) in respect of passengers, a limit of ten thousand rupees for each individual passenger.”

6. A perusal of the said section shows that the liability in respect of passengers, is limited to an extent of Rupees Ten Thousand for each individual passenger. The accident in question is of the year 1982

and therefore the liability would not be more than Rs.10000/- qua the Insurance Company. This view is supported by a decision of this Court in the case of United India Fire and General Insurance Co. Ltd. Vs. Bachu Kaba Satrotia and ors., reported in 1986(1) GLR 463 wherein it is held that under section 95(2) of Motor Vehicles Act (IV of 1959) the liability of insurer in respect of a passenger carried for hire or reward by statute is limited to Rs.10000/- per individual passenger.

6.1 Moreover, from the policy, under the head of limits of liability it is clearly mentioned as under:

> Limit of the amount of the company's liability under Section II-1(i) in respect of any one accident :
> Such amount as is necessary to meet the requirements of the Motor Vehicles Act, 1939.
> Limit of the amount of the Company's liability under Section II-1(ii) in respect of any one claim or series of claims arising out of one event: Rs. 50000/-.

Therefore the award of the Tribunal is patently erroneous.

7. In the premises aforesaid, the present appeal is partly allowed. It is held that the liability of the

present respondent nos.2 and 3 i.e. original opponent nos.1 and 2 shall remain intact to meet the entire claim award with interest as awarded by the Tribunal. However, so far as the present appellant Insurance Company is concerned, the award will stand modified and the amount awarded against the appellant will be Rs.10000/- with running interest thereon at the rate of 12% per annum from the date of the application till realization. It will be open to the original claimant to recover the remaining amount from respondent nos.2 and 3 i.e. original opponent nos.1 and 2. The remaining amount lying in the FDR along with interest shall be refunded to the Insurance Company if the same has not been withdrawn by the original claimants. However, if the amount has been withdrawn, it will be open for the insurance company to recover the same from the owner. The award of the Claims Tribunal shall stand modified accordingly. No order as to costs.

[K.S. JHAVERI, J.]

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